

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

JOSHUA STEELE ZWART,

Appellant.

No. 39352-2-II

UNPUBLISHED OPINION

Hunt, P.J.—Joshua Steele Zwart appeals the trial court’s denial of his motion to modify his sentence. He argues that his sentence exceeds the statutory maximum in violation of RCW 9.94A.701(8).¹ We affirm.²

Zwart pleaded guilty to failure to register as a sex offender. The trial court sentenced him to 50 months of confinement and 36 to 48 months of community custody, with the total amount of confinement and community custody served not to exceed the statutory maximum sentence of

¹ Former RCW 9.94A.701(8) (2009) requires the court to reduce an offender’s term of community custody “whenever an offender’s standard range term of confinement in combination with the term of community custody exceeds the statutory maximum for the crime as provided in RCW 9A.20.021.” Effective June 10, 2010, RCW 9.94A.701(8) is recodified as RCW 9.94A.701(9). Laws of 2010, ch. 224, § 5

² A commissioner of this court initially considered Zwart’s appeal as a motion on the merits under RAP 18.14 and then transferred it to a panel of judges.

60 months. Zwart moved to modify his sentence under CrR 7.8(b), arguing that the duration of his sentence exceeds the statutory maximum. The trial court denied his motion.

If a judgment and sentence provides that the total combined term of confinement and the actual amount of community custody served cannot exceed the statutory maximum sentence, the sentence is valid. *In re Personal Restraint of Brooks*, 166 Wn.2d 664, 670-73, 211 P.3d 1023 (2009). RCW 9.94A.701(8) is not inconsistent with the holding in *Brooks*. Zwart's judgment and sentence contains the necessary provision limiting the length of his sentence to the statutory maximum; thus, his sentence is not defective. We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Hunt, J.

We concur:

Worwick, ACJ.

Quinn-Brintnall, J.